



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/155188

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 03, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on May 15, 2014, at Milwaukee, Wisconsin. The record was held open post-hearing for the submission of additional evidence. On May 27, 2014, additional evidence was submitted in support of the Petitioner's case. On June 5, 2014, the agency submitted its analysis of the additional evidence. The record was closed on June 5, 2014.

The issue for determination is whether the agency properly determined that the Petitioner is liable for an overissuance of FS benefits in the amount of \$8016 for the period of January 1, 2012 – December 31, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Keegan Trentzsch  
Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner was reported as a member of her mother's ([REDACTED]) household at all times relevant herein. Petitioner was 18 years or older at all times relevant herein.
3. On January 30, 2014, the agency issued a Notification of FS Overissuance to [REDACTED] and to the Petitioner informing them that the agency intends to recover an overissuance of FS benefits in the amount of \$8016 for the period of January 1, 2012 – December 31, 2012.
4. On February 4, 2014, [REDACTED] and the Petitioner filed appeals with the Division of Hearings and Appeals. [REDACTED]'s appeal is designated DHA Case No. FOP/155189.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Handbook (FSH), § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FSH, § 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years prior to discovery. *Id.* "Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency discovered a potential overpayment in or about August, 2013.

All adults that were included in a household at the time of a FS overpayment are liable for repayment of the overissuance of benefits. Even if the liable member moves to another household, responsibility for the overpayment continues. FSH § 7.3.1.2; 7 CFR 273.11(e)(6).

The Petitioner is liable for any overpayment that occurred in her mother's case in 2012 while she was a member of the household. Petitioner and [REDACTED] testified at the hearing that Petitioner was not a member of the household when she was attending school in Alabama from January – mid-May, 2012 and September – December, 2012. There is no evidence in the case comments or other agency documentation that [REDACTED] or the Petitioner reported her absence from the household. Petitioner did not present any evidence to demonstrate that she was enrolled in school in Alabama. While there was no evidence presented, the Petitioner's testimony seemed credible and she did provide an updated address at the hearing for herself at school in Alabama.

In [REDACTED]'s appeal of the FS overissuance, there was a determination that the agency did not meet its burden of demonstrating whether there was an overissuance of FS benefits to the household in 2012, when the overissuance started and who or what caused the overissuance. The matter was remanded to the agency to obtain and review [REDACTED]'s self-employment income report forms, tax returns and any other relevant information to determine whether there was an overissuance of FS benefits to the household in 2012, when the overissuance started and who or what caused the overissuance. Based on that review and analysis, the agency was ordered to issue a new Notification of FS Overissuance. See Decision in DHA Case No. FOP/155189.

I conclude that the Petitioner may be jointly and severally liable for any overissuance of FS benefits to [REDACTED]'s household during 2012 while she was a member of the household.

Because the agency has not met its burden of demonstrating whether there was an overissuance of benefits to the household in 2012, when the overissuance started and who or what caused the overissuance, I am remanding this matter to the agency to do the same analysis as ordered in

FOP/155189. Specifically, the agency must obtain and review documentation regarding ■■■'s income and issued a new Notification of FS Overissuance to ■■■ and to the Petitioner. The Petitioner will have new appeals rights related to that determination. If she does file an appeal, she will have the opportunity to present evidence to demonstrate any period of time when she was not a household member in 2012.

### **CONCLUSIONS OF LAW**

There is insufficient evidence to conclude that the Petitioner is liable for an overissuance of FS benefits in 2012.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency to obtain and review ■■■'s SEIRFs, tax returns and any other relevant information to determine whether there was an overissuance of FS benefits to the household in 2012, when the overissuance started and who or what caused the overissuance. Based on its review and analysis, if the Petitioner is deemed liable for an overissuance, the agency shall issue a new Notification of FS Overissuance to the Petitioner. The notice shall give the Petitioner new appeal rights regarding the determination. These actions shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of June, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 18, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability